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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/582,568
Filing Date: June 12, 2006
Appellant(s): PENG ET AL.

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Carl Giordano,RegNo. 41780
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/12/2011 appealing from the Office action

mailed 07/08/2011.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying

by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial

proceedings which will directly affect or be directly affected by or have a bearing on the

Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-18 have been presented for examination. All of these claims are

pending, stand finally rejected, and form the subject matter of the present appeal.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of

amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter

contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

Claims 1-18 are unpatentable under 35 USC 103(a) over Salmonsen (USP no.

7,209, 874) in view of Sato (USPPA 2003/0041123) further in view of Pak (USPPA

2004/0267790) and further in view of Silen (USPPA 2002/0116518).

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in

the Appendix to the appellant's brief.

(8) Evidence Relied Upon

Salmonsen	(US Patent 7209874)	April 24, 2007
Sato	(US Publication 2003/0041123)	February 27, 2003
Pak	(US Publication 2004/0267790)	December 30, 2004
Silen	(US Publication 2002/0116518)	August 22, 2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claim 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Salmonsen (US Patent 7209874) further in view of Sato (US Publication

2003/0041123) futher in view of Pak (US Publication 2004/0267790) further in view of

Silen (US Publication US 2002/0116518).

With respect to '*pre-stored content including at least a quality menu of the*

downloaded content, wherein the quality menu includes a plurality of quality options for

the downloaded content' the Examiner notes that the quality menu is not displayed to

the user and that there is no interaction between the user and said quality menu. Thus

the Examiner interprets said quality menu as rendering information.

The Examiner notes that the limitation indicating '*quality options being*

independent of rendering capabilities of said processing system' is indicating that only

the bandwidth-related quality options are considered for selection in the said quality

menu, such that the *rendering capabilities of said processing system* are not considered

for selection in the quality menu, and such that only the said bandwidth-related *quality*

option is selected without making a selection in regard for the device rendering

capabilities.

Upon inspection of Applicant Specifications Page 1 Lines 20-30 the Examiner

interprets said '*quality options being independent of rendering capabilities of said*

processing system' as a selection of available type of network connections and their

corresponding bandwidth attributes (e.g. dial-up, ISDN, or broadband connection).

Salmonsen Figure 11,Column 26 Lines 1-10 disclosed a connection manager

1018 supports the content transfer subsystem 1012 and the format decoder subsystem

1014 and controls connections associated with a particular device including preparation

to receive an incoming transfer, flow control, and support of multiple simultaneous

renderers, such that that DVD content is played with downloaded content.

In regard to Claim 1 Salmonsen disclosed (re. Claim 1) method for playing a

content, comprising the steps of playing the content available for downloading combined

with the pre-stored content. (Salmonsen-Column 24 Lines 35-40,' *a web-enabled DVD*

player is able to combine content from a DVD disk with special network-accessed

applications')

Salmonsen (re. Claim 1) *synchronous playing of the content to be downloaded and*

the pre-stored content. (Salmonsen- Column 26 Lines 1-10 , *connection manager 1018*

supports multiple simultaneous renderers, such that DVD content is played with

downloaded content)

While Salmonsen substantially disclosed the claimed invention Salmonsen did

not disclose (re. Claim 1) reading a pre-stored content *providing additional information*

regarding a content of said content available for downloading; detecting available

bandwidth; sending a request for downloading the content available for downloading

according to the additional information regarding the content available for downloading,

wherein the request includes the information of the bandwidth, and receiving the

content available for downloading according with the detected bandwidth.

Salmonsen did not disclose (re. Claim 1) *monitoring the available bandwidth to adjust a quality of the combined content* available for downloading *and the pre-stored content.*

Sato disclosed (re. Claim 1) reading a pre-stored content *providing additional information regarding a content of said content* available for downloading;(Sato-Paragraph 46-Paragraph 47,*the optical disk contains the disk ID and address information indicating website from which the content is downloaded from*)

Pak disclosed (re. Claim 1) sending a request for downloading the content available for downloading wherein the request includes the information of the bandwidth, and receiving the content available for downloading according with the detected bandwidth.(Pak-Paragraph 39, *the client requests the content service server to download predetermined contents and transmits the environment information to the contents service server*)

Silen disclosed (re. Claim 1) detecting available bandwidth; (Silen-Paragraph 19-23) and downloading the requested content according to the bandwidth. (Silen-Paragraph 26-Paragraph 29)

Silen disclosed (re. Claim 1) *monitoring the available bandwidth to adjust a quality of the combined content* available for downloading *and the pre-stored content.* (Silen-Paragraph 33,*'query at regular intervals and determine if bandwidth is still acceptable, and if the bandwidth is not acceptable, adjust the presentation accordingly '*)

Salmonsen, Sato,Pak and Silen are analogous art because they present concepts and practices regarding presentation of media over a network. At the time of

the invention it would have been obvious to combine Sato into Salmonsen. The

motivation for said combination would have been to so that there is no need for the user

to enter the address information manually. (Sato-Paragraph 16)

Similarly at the time of the invention it would have been obvious to combine Pak

into Salmonsen-Sato. The motivation for said combination would have been to

automatically send the client device environment information and avoid having the user

make mistakes in manipulating the household appliances to effect a download. (Pak-

Paragraph 9)

Similarly at the time of the invention it would have been obvious to combine Silen

into Salmonsen-Sato-Pak. The motivation for said combination would have been to

enable adjusting a presentation frame size based upon detected bandwidth in order to

present the most suitable quality of the download content.

The Examiner notes that while Sato disclosed pre-stored content providing the

URL address of the content source Sato did not disclose (re. Claim 1) *pre-stored*

content including at least a quality menu of the content available for downloading,

wherein the quality menu includes a plurality of quality options <u>associated with different</u>

<u>bandwidth related rendering qualities associated with</u> the downloaded content'.

The Examiner notes that the limitation indicating '*quality options being*

independent of rendering capabilities of said processing system' is indicating that <u>only</u>

the bandwidth-related quality options are considered for selection in the said quality

menu, such that the *rendering capabilities of said processing system* <u>are not</u> considered

for selection in the quality menu, and such that <u>only</u> the said bandwidth-related *quality option* is selected without making a selection in regard for the device rendering capabilities.

Upon inspection of Applicant Specifications Page 1 Lines 20-30 the Examiner interprets said '*quality options being independent of rendering capabilities of said processing system*' as a selection of available type of network connections and their corresponding bandwidth attributes (e.g. dial-up, ISDN, or broadband connection).

Pak Figure 4 Paragraph 35, Paragraph 39 disclosed wherein the *client environment* is referring to the network transmission velocity of a network data transmission channel available for downloading. The said network data channel transmission velocity is an attribute that is not tied to any particular device and is indicative of the type of network connection and the features of the network.

Pak Paragraph 51 disclosed selecting one quality of content based on the type of network connection.

The Examiner notes that while Pak disclosed consideration of the 1) device rendering capabilities in addition to the 2) network data channel transmission velocity, it would have been obvious to a person of ordinary skill in the networking art to use only one of the client environment attributes.

At the time of the invention it would have been obvious to include the available network options by Pak such as network data channel transmission velocity with the pre-stored information disclosed by Sato, in for the user rendering device to match the

rendering options before making the download request for content.   This would an

improvement on Pak because in Pak the client environment database does not account

for variable network conditions after the initial selection of network data channel

transmission velocity.

Silen provides the disclosure and motivation for accounting for variable network

conditions when downloading content over the network.

The motivation for said combination would have been, as suggested by Silen, to

enable adjusting a presentation frame size based upon detected bandwidth in order to

present the most suitable quality of the download content and avoid having the user

make mistakes in manipulating the household appliances to effect a download. (Silen-

Paragraph 8)

Salmonsen-Sato-Pak-Silen disclosed (re. Claim 1) *pre-stored content including*

at least a quality menu of the content available for downloading, wherein the quality

menu includes a plurality of quality options <u>*associated with different bandwidth related*</u>

<u>*rendering qualities associated with*</u> *the content available for downloading, said quality*

options being independent of rendering capabilities of said processing system'. (Pak -

Paragraph 51, *selecting one quality of content based on the type of network*

connection.)

In regard to Claims 4,7, Claims 4,7 (re. method) are rejected on the same basis

as Claim 1.

The motivation to combine described in the rejection for Claim 1 applies to Claims 4,7.

In regard to Claims 10,13,16, Claims 10,13,16 (re. a device) are rejected on the same basis as Claim 1.

The motivation to combine described in the rejection for Claim 1 applies to Claims 10,13,16.

In regard to Claims 2,5,8,11,14,17 Salmonsen-Sato-Pak-Silen disclosed (re. Claim 2,5,8,11,14,17) wherein the request includes a URL of a website on which the downloaded content is stored. (Silen-Paragraph 21)

The motivation to combine described in the rejection for Claim 1 applies to Claims 2,5,8,11,14,17.

In regard to Claims 3,6,9,12,15,18 Salmonsen-Sato-Pak-Silen disclosed (re. Claim 3,6,9,12,15,18) wherein the detecting step is arranged for detecting throughput of effective information transmitted within a specific period. (Silen-Paragraph 33)

The motivation to combine described in the rejection for Claim 1 applies to Claims 3,6,9,12,15,18.

(10) Response to Argument

The Applicant presents the following argument(s) [*in italics*]:

... The Examiner notes that while Pak disclosed consideration of the 1) device rendering capabilities in addition to the 2) network data channel transmission velocity, <u>it</u>

would have been obvious ... to use only one of the client attributes...   However,

there is no objective teaching provided by Pak for using only the network bandwidth as

Pak specifically teaches using the hardware specification and is attempting to provide a

selection feature of using "'information related to the hardware specification."

Hence, the use of only the network characteristics is contrary to the teachings of Pak.

The Examiner respectfully disagrees with the Applicant.

The Examiner notes that the limitation indicating '*quality options being*

independent of rendering capabilities of said processing system' is indicating that only

the bandwidth-related quality options are considered for selection in the said quality

menu, such that the *rendering capabilities of said processing system* are not considered

for selection in the quality menu, and such that only the said bandwidth-related *quality*

option is selected without making a selection in regard for the device rendering

capabilities.

Upon inspection of Applicant Specifications Page 1 Lines 20-30 the Examiner

interprets said '*quality options being independent of rendering capabilities of said*

processing system' as a selection of available type of network connections and their

corresponding bandwidth attributes (e.g. dial-up, ISDN, or broadband connection).

The Applicant Remarks appear to indicate that in the claimed invention the said

quality option is selected without regard for the device rendering capabilities.

The Supreme Court in KSR International Co. v. Teleflex Inc., identified a

number of rationales to support a conclusion of obviousness which are consistent with

the proper "functional approach" to the determination of obviousness as laid down in

Graham. An exemplary rationale that may support a conclusion of obviousness is that of " Obvious to try " – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success.

As stated in the Advisory Page 3, given that Pak does not teach a selection feature using 'information related to the hardware specification' as a required and indispensable step, it would have been obvious to a person of ordinary skill in the networking art to omit said selection when the particular element or function adjustment is not desired, in order to avoid making the quality menu selection process more complicated than necessary.

Pak disclosed a finite number of identified factors/attributes to be considered for the rendering options. That is, Pak disclosed said factors/attributes to be *1) the device rendering capabilities and 2) the network data channel transmission velocity.*

The Examiner notes that Pak Paragraph 6,Figure 1 indicates wherein a contents service server, for any given media file, only provides for only one attribute to consider, that is, *the network data channel transmission velocity.*

The Examiner believes that the Pak Paragraph 6, Figure 1 provides a suggestion to a person of ordinary skill in the networking art that for a content file to be downloaded from a server, that it is possible to effect rendering while having only one attribute to consider.

Furthermore a person of ordinary skill in the networking art would have recognized the obvious step of considering only one of the identified factors/attributes in order to reduce the complexity of choosing the appropriate rendering options. A person

of ordinary skill in the networking art would have recognized that if the rendering quality

was not acceptable using only one of the identified factors/attributes, then and only

then, would it be necessary to consider the other identified factors/attributes.

        The Applicant presents the following argument(s) [*in italics*]:

        ... the Office Action refers to Salmonsen for teaching the element of "for playing

the combined content available for downloading and the pre-stored content

synchronously."...However, the simultaneous presentation (according to a PIP function)

is not comparable to a "synchronous" presentation, as is recited in the claims.

While Salmonsen discloses presentations may be simultaneous (at the same time),

there is no disclosure by Salmonsen that the presentations are "in synchronization" with

other.

        The Examiner respectfully disagrees with the Applicant.

        While Salmonsen disclosed *simultaneous presentation (according to a PIP*

function) Salmonsen is not limited to this embodiment.

        Salmonsen Column 24 Lines 35-45 (as presented in the Final rejection Page 8)

disclosed an enhanced web-enabled DVD that extends capabilities to combine content

from a DVD with special network-accessed applications. The Examiner notes that the

Applicant Specifications Page 1, Figure 5 is describing the claimed invention as an

Enhanced DVD that also combines/renders content from a DVD together with content

from the internet.

Salmonsen Figure 6,Figure 11,Column 26 Lines 1-10 disclosed a connection

manager 1018 supports the content transfer subsystem 1012 and the format decoder

subsystem 1014 and controls connections associated with a particular device including

preparation to receive an incoming transfer, flow control, and support of multiple

simultaneous renderers. The Salmonsen virtual LBA manager 532 can emulate

addressing of DVD player content from content acquired from the Internet, and

Salmonsen using virtual content renderer 540 renders the content acquired from the

Internet.

Thus Salmonsen-Sato-Pak-Silen disclosed (re. Claim 1) *synchronous playing*

of the content to be downloaded and the pre-stored content. (Salmonsen- Column 26

Lines 1-10 , *connection manager 1018 supports multiple simultaneous renderers, such*

that DVD content is played with downloaded content)

The Applicant presents the following argument(s) [*in italics*]:

... the claims recite an element that is more specific then the mere simultaneous

presentation or display of two images or instances. While the two presentations of

Salmonsen may be played at the same time there is no teaching that there is a

synchronization between the two content being played. (i.e., "combined content

available for downloading and the pre-stored content synchronously.").

The Examiner respectfully disagrees with the Applicant.

The Applicant Remarks are differentiating the claimed invention based on the

word '*synchronously*' . The Examiner notes that the claim language does not indicate

any limitations or description of how the *combined content available for downloading and the pre-stored content are played synchronously*, such as for example, using temporal, spatial or content indicia to implement synchronization.

The Examiner notes that the word *synchronously* may be interpreted as being shown at the same time.

The Examiner believes that Salmonsen system for an enhanced web-enabled DVD that extends capabilities to combine content from a DVD with special network-accessed applications includes rendering *downloaded content and the pre-stored content synchronously*. The Salmonsen virtual LBA manager 532 can emulate addressing of DVD player content from content acquired from the Internet, and Salmonsen using virtual content renderer 540 renders the content acquired from the Internet, such that Salmonsen can render playback of content while continuously switching back and forth from downloaded content or pre-stored DVD content without any degradation in rendering quality.

The Applicant presents the following argument(s) [*in italics*]:

… Pak explicitly teaches that the client environment is used in the selection process and any device that refers to Pak includes a quality menu that is dependent upon rendering capabilities. Otherwise, the device independent of the rendering capabilities is contrary to the teachings of Pak.

The Applicant remarks appear to indicate that the client environment is specific to a device limitation, as in the device display resolution, physical display size.

The Examiner respectfully disagrees with the Applicant.

The Examiner notes that the limitation indicating '*quality options being independent of rendering capabilities of said processing system*' is indicating that only the bandwidth-related quality options are considered for selection in the said quality menu, such that the *rendering capabilities of said processing system* are not considered for selection in the quality menu, and such that only the said bandwidth-related *quality option* is selected without making a selection in regard for the device rendering capabilities.

Upon inspection of Applicant Specifications Page 1 Lines 20-30 the Examiner interprets said '*quality options being independent of rendering capabilities of said processing system*' as a selection of available type of network connections and their corresponding bandwidth attributes (e.g. dial-up, ISDN, or broadband connection).

Pak Figure 4 Paragraph 35, Paragraph 39 disclosed wherein the *client environment* is referring to the network transmission velocity of a network data transmission channel available for downloading. The said network data channel transmission velocity is an attribute that is not tied to any particular device and is indicative of the type of network connection and the features of the network such as a dial-up, ISDN, or broadband connection.

Pak Paragraph 51 disclosed selecting one quality of content based on the type of network connection.

The Examiner notes that while Pak disclosed consideration of the 1) device rendering capabilities in addition to the 2) network data channel transmission velocity, it

would have been obvious to a person of ordinary skill in the networking art to use only one of the client environment attributes.

At the time of the invention it would have been obvious to include the available network options by Pak such as network data channel transmission velocity with the pre-stored information disclosed by Sato, in for the user rendering device to match the rendering options before making the download request for content. This would an improvement on Pak because in Pak the client environment database does not account for variable network conditions after the initial selection of network data channel transmission velocity.

Silen provides the disclosure and motivation for accounting for variable network conditions when downloading content over the network.

The motivation for said combination would have been, as suggested by Silen, to enable adjusting a presentation frame size based upon detected bandwidth in order to present the most suitable quality of the download content and avoid having the user make mistakes in manipulating the household appliances to effect a download. (Silen-Paragraph 8)

There would be no substantial innovation resulting in the combination of Pak with Sato-Silen because they are readily modified without breaking or teaching away from the invention and produce the same predictable result.

Thus Salmonsen-Sato-Pak-Silen disclosed (re. Claim 1) *pre-stored content including at least a quality menu of the content available for downloading, wherein the quality menu includes a plurality of quality options* <u>*associated with different bandwidth*</u>

related rendering qualities associated with the content available for downloading, said

quality options being independent of rendering capabilities of said processing system'.

(Pak -Paragraph 51, _selecting one quality of content based on the type of network_

connection, wherein said type of network connection is independent of rendering

capabilities)

The Applicant presents the following argument(s) [_in italics_]:

... Pak teaches that a minimum bandwidth is provided in the quality menu, which

is preset. Pak fails to provide any teaching regarding "'an available bandwidth," as is

recited in the claims...

The Examiner respectfully disagrees with the Applicant.

Pak is not relied upon to disclose _detecting an available bandwidth_ pertaining to

the real-time network conditions at the time of the download request.

In regard to Claim 1 Silen disclosed (re. Claim 1) detecting available bandwidth;

(Silen-Paragraph 19-23) and downloading the requested content according to the

bandwidth. (Silen-Paragraph 26-Paragraph 29)

In regard to Claim 1 Silen disclosed (re. Claim 1) _monitoring the available_

bandwidth to adjust a quality of the combined content available for downloading _and the_

pre-stored content. (Silen-Paragraph 33,'_query at regular intervals and determine if_

bandwidth is still acceptable, and if the bandwidth is not acceptable, adjust the

presentation accordingly ')

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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